

UNITED STATES COURT OF APPEALS  
FOR THE  
FEDERAL CIRCUIT

---

APPEAL 14-1171

CAPITAL MACHINE COMPANY, INC. and INDIANA FORGE, LLC,

Plaintiffs/Appellants,

v.

MILLER VENEERS, INC., THOMAS A. MILLER,  
BENJAMIN R. MILLER, SALLY M. SANDO, ROBERT D. BRAND,  
INDIANAPOLIS VENEER WORKS, LLC, EGENOLF MACHINE, INC.,  
and MERRITT PLYWOOD MACHINERY, INC.,

Defendants/Appellees.

Appeal from the United States District Court for the Southern District  
of Indiana in Case No. 09-CV-0702, Judge Jane Magnus-Stinson.

**APPELLEES' UNOPPOSED MOTION TO WITHDRAW APPELLANTS' TENDER OF  
JOINT APPENDIX AND ACCEPT APPELLANTS' OPENING BRIEF AS FILED**

---

Michael A. Swift  
MAGINOT, MOORE & BECK, LLP  
One Indiana Square, Suite 2200  
Indianapolis, IN 46204  
Tel. 317-638-2922  
Fax: 317-638-2139

Attorney for Appellee, Miller Veneers, Inc.

J. Lee McNeely  
Cynthia A. Bedrick  
Charles B. Daugherty  
McNEELY, STEPHENSON,  
THOPY & HARROLD  
2150 Intelliplex Drive, Suite 100  
Shelbyville, IN 46176  
Tel. 317-825-5110  
Fax: 317-825-5109

Attorneys for Appellees

1. On February 24, 2014, Appellants filed their Opening Brief with the Court.
2. In filing their Opening Brief, Appellants tendered a joint appendix, a portion of which would have contained Appellees' confidential information.
3. On February 24, 2014, the Court issued a Notice of Rejection stating that the "brief of Appellants Capital Machine Company, Inc. and Indiana Forge, LLC, Plaintiffs/Appellants' Appendix [27], [26], is not in compliance with the rules of this court and is therefore rejected for filing. Appendix due 03/10/2014."
4. Appellants' counsel contacted Appellees' counsel regarding the Court's Notice of Rejection and alerted Appellees that the Court required two versions of the confidential portion of the Appendix—one with redactions and one with brackets. Appellants requested that Appellees redact and bracket portions of the Appendix in accordance with Rule 30(h) and submit the redacted and bracketed versions to the Court on or before March 10, 2014.
5. Pursuant to Rule 30(a)(4), the "appellant must serve and file an appendix within 7 days after the last reply brief is served and filed."
6. Pursuant to Rule 30(b)(6), the "appellant must prepare the appendix to be filed with the court from designated material by selecting from that material only items required by these rules and pages specifically referred to in the briefs of the parties." And further that, "[p]ages of the designated material not referenced in the briefs . . . must be omitted from the appendix filed with the court."
7. Because Appellees are only now drafting their response brief, Appellants' tender of a joint appendix is premature. The parties cannot yet know what to include from their designated materials in the joint appendix and cannot know which materials may need to be redacted and bracketed.

8. The parties desire that Appellants' attempt to file an appendix be withdrawn, that, accordingly, the parties not be required to submit a joint appendix on March 10, 2014, and that the parties, instead, be required to file a joint appendix no later than 7 days following service and filing of the reply brief, in conformance with this Court's Rules. Appellees will make any redactions and bracketing necessary for the joint appendix to conform to the Rules and will cooperate with Appellants to ensure the joint appendix is filed no later than 7 days following service and filing of the reply brief. As a consequence of withdrawing Appellants' attempt to file an appendix, the parties request that the Court deem Appellants' Opening Brief filed as of February 24, 2014.

9. Counsel for Appellees has contacted counsel for Appellants and Appellants have no objection to this Motion.

WHEREFORE, Appellees, by counsel, respectfully request that Appellants' tender of a joint appendix be withdrawn, that the parties not be required to file a joint appendix by March 10, 2014, that the deadline for filing the joint appendix be extended to 7 days following the filing of the reply brief, and that the Court deem Appellants' Opening Brief filed as of February 24, 2014.

Respectfully submitted,

s/J. Lee McNeely  
J. Lee McNeely  
Cynthia A. Bedrick  
Charles B. Daugherty  
McNEELY, STEPHENSON, THOPY & HARROLD  
2150 Intelliplex Drive, Suite 100  
Shelbyville, IN 46176  
Phone: 317-825-5110  
Fax: 317-825-5109  
Attorneys for Appellees

Michael A. Swift  
MAGINOT, MOORE & BECK, LLP  
111 Monument Circle, Suite 3250  
Chase Tower  
Indianapolis, IN 46204  
317-638-2922  
Attorney for Appellee Miller Veneers, Inc.

**CERTIFICATE OF INTEREST**

Counsel for the Appellees, J. Lee McNeely, certifies the following:

1. The full name of every party or amicus represented by me is: Miller Veneers, Inc., Thomas A. Miller, Benjamin R. Miller, Sally M. Sando, Robert D. Brand, Indianapolis Veneer Works, LLC, Egenolf Machine, Inc., and Merritt Plywood Machinery, Inc.
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: None.
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are: None.
4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

J. Lee McNeely  
Cynthia A. Bedrick  
Charles B. Daugherty  
McNEELY STEPHENSON THOPY & HARROLD  
Attorneys for all Appellees

Michael A. Swift  
MAGINOT, MOORE & BECK, LLP  
111 Monument Circle, Suite 3250  
Chase Tower  
Indianapolis, IN 46204  
Attorney for Appellee, Miller Veneers, Inc.

March 10, 2014  
Date

s/J. Lee McNeely

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy hereof is being served on March 10, 2014, on the following counsel of record via electronic mail and the Court's electronic filing system:

Paul B. Overhauser  
Overhauser Law Offices, LLC  
740 W. Green Meadows Drive, Ste. 300  
Greenfield, IN 46140

*s/Michael A. Swift*  
\_\_\_\_\_  
MAGINOT, MOORE & BECK, LLP  
Michael A. Swift  
One Indiana Square, Suite 2200  
Indianapolis, IN 46204  
317-638-2922  
Attorney for Appellee Miller Veneers, Inc.

J. Lee McNeely  
Cynthia A. Bedrick  
Charles B. Daugherty  
McNEELY, STEPHENSON, THOPY & HARROLD  
2150 Intelliplex Drive, Suite 100  
Shelbyville, IN 46176  
Phone: 317-825-5110  
Fax: 317-825-5109  
Attorneys for Appellees